IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 789 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHABIR MOHAMMED MUSTAFA SHAIKH

Appearance:

1. Special Civil Application No. 789 of 2003

MR ASHISH M DAGLI for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/07/2004

ORAL JUDGEMENT

1.1 The petitioner herein, has challenged the order passed by the Conciliation Officer in Approval

Application No.118 of 1997 dated 19/09/02, whereby, the Conciliation Officer rejected the Approval Application filed by the petitioner - Corporation on the ground that the petitioner - Corporation had not paid salary as per the provisions of the Industrial Disputes Act, 1947.

2.1 The brief facts of the case are that the respondent - workman was working with the petitioner Corporation as a Driver and on account of misconduct on the part of the respondent workman, inquiry was initiated against him. As the respondent workman was found guilty, he was dismissed from the service of the Corporation with effect from 24/07/97 after getting approval from the Authority on 31/12/97.

2.2 It is the case of the petitioner - Corporation that thereafter S.C.A.No.7239/01 was preferred before this Court on the ground that cyclo-styled order was passed by the Conciliation Officer. By order dated 12/04/02 this Court (Coram : H. K. Rathod, J.) quashed and set aside the order passed by the Conciliation Officer dated 31/12/97 and directed him to decide the Approval Application of the petitioner Corporation afresh. Accordingly, the matter was remanded back to the Conciliation Officer for decision.

2.3 The Conciliation Officer, after hearing the parties and after considering the documentary evidence on record, rejected the said application by order dated 19/09/02. It is this judgment and order which is under challenge before this Court through this petition.

3.1 Mr.A M Dagli learned advocate appearing for the petitioner has contended that the Authority has committed an error of law by rejecting the approval application on the ground that the basic pay was paid less to some extent, and therefore, the proceedings under the I.D.Act were fully complied with.

3.2 Mr.Dagli for the petitioner has further submitted that on account of the unauthorized absenteeism of the respondent workman, the petitioner Corporation was faced with great administrative difficulty. Not only that, even during the course of departmental inquiry, the respondent workman had remained absent and had not cooperated with the inquiry.

4.1 Mr.Rathod learned advocate appearing for the respondent workman has submitted that since the petitioner Corporation has not complied with the provisions of the Industrial Disputes Act, the competent

authority was justified in rejecting the Approval Application of the petitioner.

5.1 Mr.Rathod has further submitted that since the respondent was not kept out of service pending the Approval Application, it is clear that there was no fault on the part of the respondent workman. Moreover, the respondent was also deprived of his salary. Therefore, some back-wages is required to be paid to the respondent.

6.1 At the request of both the sides, I have considered the case on merits, without remanding the matter back for approval and to avoid further legal proceedings. I have gone through the averments made in the petition and the documents produced on record.

6.2 In view of the law laid down by this Court in the case of Gujarat State Road Transport Corporation v. Chimanlal R. Vaghri reported in 2002 (3) G.L.H. 29, it would be appropriate to impose a reasonable penalty on the respondent workman.

7.1 Considering the fact that the respondent Workman was on leave without the prior permission of the petitioner Corporation and the petitioner Corporation had to suffer some administrative difficulty on account of that, a penalty of stoppage of three increments with future effect is directed to be imposed on the respondent workman. However, the respondent workman should be treated to be in service with continuity of service, but, without any back-wages. It is clarified that while the Court has granted the continuity of service to the respondent workman, the petitioner Corporation will give regular increment annually, as and when the respondent workman is entitled for the same. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent.

(K. S. Jhaveri, J.)

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